BALTIC ORIENT SHIPPING PTE. LTD.

v.

SUNSEEKERS PTE. LTD.

HIGH COURT, SINGAPORE
FA CHUA J
[DCA NO. 36 OF 1986]
10 FEBRUARY 1988

CONTRACT: *Payment to by cash cheque - Is payment valid - Was payment made to correct party.*

The respondents sued the appellants in the District Court for a sum of $6,194 which, they claimed, was due to them. The defendants stated that they had on 4 December 1984 made a payment, by cash cheque to one N at the request of S, the former managing director of the respondents. As agreed between the parties the only issue at the trial was whether the payment of $6,000, if made at all, was made to the respondents by the appellants. The District Judge gave judgment for the respondents for the said sum of $6000 with interest and costs. The present action is an appeal from that judgment.

Held:

Affirming the decision of the District Court, N was not an employee, servant or agent of the respondents. He was clearly a stranger to the respondents and had no authority to receive any payment on their behalf. Apart from the evidence of N there was no other evidence to show that this sum was paid to S. The $6,000 was certainly not credited to the account of the appellants with the respondents. It also appeared that this was the only occasion when the appellants had paid the respondents by cash cheque. In the past payments had been made to the respondents by crossed cheques as requested in the respondents' statement of accounts sent to the appellants. The payment of $6,000, purported to have been made to the respondents in December 1984, had not been brought to the attention of the respondents. Although the usual receipts for payment had not been received from the respondents, and despite their demands for payment, until 1985. Accordingly the decisions of the District Judge that the defendants had failed to prove, on a balance of probabilities, that they have paid the plaintiffs the sum of $6,000 was held to be a correct decision. Although it was not necessary to decide the question whether if S had received $6,000 from N, this would have operated as an effective discharge of the appellants' debt to the respondents, it was further held that the appellants had, by their conduct of handing a cash cheque to N and disregarding the usual practice disentitled themselves from resisting the respondents' claim on any ground based upon the real or apparent authority of S.

[Appeal dismissed with costs.]

Cases referred to:

A.L. Underwood Ltd. v. Bank of Liverpool and Martins [1924] 1 KB 775
Clay Hill Brick & Tile Co. Ltd. v. Rawlings [1938] 4 All ER 100
International Sponge & Importers Ltd. v. Andrew Watt & Sons [1911] AC 279
Lloyd v. Grace, Smith & Co. [1912] AC 716
Midland Bank v. Reckitt [1933] AC 1

For the appellants - Gunaseelan
For the respondents - Murugesan

JUDGMENT

FA Chua J:

This appeal against the decision of the District Judge arose from a claim by the respondents (plaintiffs) for the sum of $6,194 being the alleged balance of the cost of air travel arrangements incurred by the plaintiffs on the appellants' (defendants) behalf. The defendants alleged that they had on 4 December 1984, made a payment of $6,000 to one S.M. Noordin at the request of the plaintiffs' former managing director S. Sundram, towards the settlement of monies due to the plaintiffs. As agreed between the parties, the only issue for the decision of the trial Court was whether the payment of $6,000, if made at all, was made to the plaintiffs by the defendants. The District Judge gave judgment for the plaintiffs for the said sum of $6,000 with interest and costs.

The plaintiffs are a firm of travel agents. The parties have had business dealings with each other since May 1984 and there was running account between them. Originally, a sum of $18,844 on nine invoices was due from the defendants. By April 1985 after payment of various sums by crossed cheques made payable to the plaintiffs the remaining amount due to the plaintiffs was $6,194. The plaintiffs issued receipts for these payments. Monthly statements of accounts were sent to the defendants from December 1984 reflecting the transactions of $6,194 due. On 3 May 1985, the plaintiffs sent a telex requesting the defendants to expedite payment of the amounts due to them. By a letter dated 9 May 1985, the defendants claimed, for the first time, that they had paid a sum of $6,000 and enclosed, in support, a copy of a payment voucher for $6,000 "collected by one of your employees."

The defendants maintained that S. Sundram telephoned and asked for payment. Sundram wanted cash or cash cheque. A cash cheque dated 4 December 1984, for $6,000 was prepared. S.M. Noordin came the same day; the cash cheque was handed to him and he signed the payment voucher issued by the defendants (Ex. D1).

Noordin testified that he collected the cash cheque on the instructions of Sundram who told him to cash the cheque and hand the money to Sundram. He cashed the cheque the same day and handed the $6,000 cash to Sundram.

Noordin was not an employee, servant or agent of the plaintiffs. He was at that time an assistant public health inspector with the Ministry of the Environment. According to Noordin he had known Sundram since 1967 and had run errands for Sundram three to four days in a week and sometimes more but he was not paid. Raja Mohd. Ashraff Ali, the accountant of the plaintiff company, however, said that Noordin used to come to the plaintiff company to see Sundram about once a month.

S. Sundram was the managing director of the plaintiff company and a major shareholder and he ran the business of the company. He resigned as director in December 1984 and left the company and is now living in Australia. He was forced to leave the company; he owed the company about $1 million and legal proceedings have been instituted against him. Sundram was not a witness in these proceedings.

Apart from the evidence of Noordin there was no other evidence to show that this sum of $6,000 had been given to Sundram. The $6,000 was certainly not credited to the account of the defendants with the plaintiffs.

The District Judge was of the view that the handing over of the cash cheque of $6,000 to Noordin in the circumstances was not sufficient payment to the plaintiffs.

The argument of Counsel for the appellants is that whether Sundram applied the $6,000 for the benefit of the respondent company or misappropriated the money is immaterial and irrelevant. Equally irrelevant and immaterial is the question whether the appellants were negligent in issuing the cash cheque. The real question, says Counsel, is whether the appellants paid Sundram and whether Sundram received the money in his capacity as respondent's managing director.

Counsel says that the evidence of T. Manivaseger, a director of the appellant company and the evidence of Noordin was neither challenged nor contradicted by the respondents and neither did the District Judge reject their evidence. Instead of addressing himself to the real issues before him, the District Judge made a finding that the appellants had been negligent in the circumstances and therefore must bear the consequences and pay the respondents, when the respondents never alleged negligence on the part of the appellants in their pleadings.

Counsel for the appellants submits that the appellants had adduced more than sufficient evidence to show that payment was made to Sundram and therefore the appellants are not liable to the respondents.

The only issue before the trial Court as agreed between the parties, was whether the payment of $6,000, if made at all, was made to the respondents by the appellants.

On the evidence of the appellants the cash cheque of $6,000 was received from the appellants by Noordin, who clearly was not an employee of the respondents. The appellants' initial claim in their letter of 9 May 1985, (p. 76 record of appeal) and in their answer to further and better particulars (p. 47 record of appeal) was that the cash cheque of $6,000 was delivered to Noordin, the respondents' servant or agent. The appellants were clearly ignorant of the true position of Noordin in relation to the respondents. Noordin had occasionally visited Sundram because of their friendship. He was, as the District Judge said, clearly a stranger to the respondents and had no authority to receive any payment on their behalf.

It would appear that this was the only occasion when the appellants had paid the respondents by cash cheque. In the past payments had been made to the respondents by crossed cheques as requested in the respondents' statement of accounts sent to the appellants. The appellants' director T. Manivaseger admitted in evidence that this was the usual and normal way in which the appellants paid the respondents (p. 29 record of appeal). Although Manivaseger maintained that cash cheques had previously been given to the respondents and payment vouchers issued for them, he was unable to produce any document to substantiate his claim. The respondents, on the other hand, produced five crossed cheques made payable to them to show that prior payments received by the respondents from the appellants were by way of crossed cheques. The District Judge preferred the evidence of the respondent's accountant Raja Mohd. Ashraff Ali that no payment had been previously made by the appellants other than by account payee cheques. Clearly the District Judge was right.

Ex. D1 is itself a questionable exhibit. The alleged payment of $6,000 was not "checked" or "authorised" as directed in the payment voucher. Manivaseger said that he instructed the account girl and saw her handing over the cheque to Noordin. Under cross-examination he admitted that no one signed the authorisation of D1 or checked the sum. He also admitted that, as the voucher was not authorised, payment should not have been made to Noordin on the strength of it.

On the evidence before him the District Judge in his grounds of decision said:

> In short, a cash cheque for $6,000 had been prepared for payment to the plaintiffs when it was unusual for the defendants to make any payments to ... (ctd.)
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> ... the plaintiffs otherwise than by account payee cheques; it had been handed to one Noordin when such payment to him was unauthorised by the defendants' own internal procedures; and a cash cheque meant for the plaintiffs had been given to Noordin who was a complete stranger to the plaintiffs. The payment of $6,000 purported to have been made to the plaintiffs in December 1984 was also not brought to the plaintiffs' attention although the usual receipts for payments received had not been received from the plaintiffs and despite their demands for payment, until May 1985. There was no credible evidence that this sum had been received by the plaintiffs or any of their employees or agents duly authorised to receive that sum.
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> In my judgment the defendants have failed to prove, on a balance of probabilities, that they have paid the plaintiffs the sum of $6,000.

In my view the District Judge had come to a correct decision.

In view of the District Judge's finding, it was not necessary for him to decide on the question whether, if Sundram had received the $6,000 from Noordin, it was an effective discharge of the appellants' debt to the respondents. However, the District Judge did deal with this question. In his grounds of decision the District Judge said :

> Sundram's request to the defendants for a cash cheque to settle the defendants' debt to the plaintiff company and for this to be handed over to Noordin was so unusual that it ought to have put the defendants on inquiry as to Sundram's authority. They must of course accept the consequences that follow such negligence; see *Midland Bank v. Reckitt* [1933] AC 1; *A.L. Underwood Ltd. v. Bank of Liverpool and Martins* [1924] 1 KB 775. Further, in ignoring the usual practice that existed between the parties for the settlement of debts due to the plaintiff company, and in disregarding an express notice by the plaintiffs (in their monthly statement of accounts) as to a particular mode of payment when payments were ... ctd
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> ... made to them, the defendants may also have disentitled themselves from resisting the plaintiffs' claim on any ground based upon the real or apparent authority of Sundram.

The cases cited by Counsel for the appellants - *Clay Hill Brick & Tile Co. Ltd. v. Rawlings* [1938] 4 All ER 100; *International Sponge & Imports Ltd. v. Andrew Watt & Sons* [1911] AC 279; *Lloyd v. Grace, Smith & Co.* [1912] AC 716 - are distinguishable.

In *Clay Hill Brick's* case, the defendant believed that the company was a one-man company; the articles of the company provided that directors might delegate powers; there was a power under the articles to authorise B (the managing director of the company who requested the cheques be made payable to him or his order) to receive payments in cash; the defendant had no notice that payments had to be made in any particular way. The present case is not a oneman company; Sundram was not authorised to receive payments in cash; the appellants had in the past made payments by crossed cheques; and the appellants had notice that payments were to be made by crossed cheques.

In *International Sponge & Importers'* case the statements of account did not contain a sufficient intimation to their customers that the traveller of the plaintiffs was not authorised to receive payment for goods delivered in cash or in a cheque in his favour which could be cashed at once. In our case there was no evidence of previous cash cheques being given and accepted by the respondents.

In *Lloyd's* case it had been clearly found that the fraud was committed in the course of and within the scope of the duties which the defendants had entrusted their agents and consequently the defendants must in those circumstances stand answerable in law for their

agents' misconduct. In our case the District Judge did not find that Sundram had committed fraud; he found that the appellants had failed to prove that they had paid the respondents the sum of $6,000.

The views expressed by the District Judge are supported by cases cited by him. I agree with his views.

In the result this appeal must be dismissed with costs.

Also found at [1988] 2 CLJ 354